Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Presubscribed Interexchange Carrier Charges	)	CC Docket No. 02-53
	)	

COMMENTS OF MCI

MCI, Inc. ("MCI") respectfully submits these comments in response to the Further Notice of Proposed Rulemaking released by the Federal Communications Commission ("Commission") on April 23, 2004 in the above-referenced proceeding ("*Further NPRM*").[1]

I. Introduction

As MCI has explained in its previous comments in this proceeding, charges by incumbent local exchange carriers ("LECs") assessed on end users seeking to change their presubscribed interexchange carriers ("PIC-change charges") are well above cost, and have a deleterious effect on customer choice and competition.[2] In the *Further NPRM*, the Commission sought comment on how best to ensure reasonable PIC-change charges. As discussed below, the Commission should require incumbent LECs to bifurcate PIC-change charges so that there are separate charges for electronic and manual processing. The Commission should also establish new safe harbors for the two charges. Within 30 days of an order adopting the new safe harbors,

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1 *Presubscribed Interexchange Carrier Charges*, Further Notice of Proposed Rulemaking, 19 FCC Rcd 7445 (2004) (FCC 04-96).

2 WorldCom's Comments, CC Docket No. 02-53 (June 14, 2002); Joint Reply Comments of WorldCom and the Competitive Telecommunications Association, CC Docket No. 02-53 (July 1, 2002); *see also* MCI Petition to Reject or, in the Alternative, Suspend and Investigate, *BellSouth Telecommunications, Inc. Tariff FCC No. 1*, Transmittal No. 746 (Oct. 21, 2003) ("MCI Opposition to BellSouth Tariff").

incumbent local exchange carriers ("LECs") should be required to file revised tariffs. MCI also urges the Commission to clarify that an incumbent LEC may not recover the costs of PIC freezes in its PIC-change charges, and to require all LECs, including competitive LECs, to comply with the new PIC-change charge rules.

II. The Commission Should Adopt Separate Safe Harbors for Electronic and Manual PIC-Change Charges Based On Data Provided In the Recent BellSouth Tariff Filing

Separate Charges for Manual and Electronic Processing. The Commission sought comment on whether there should be separate charges and associated safe harbors for manual and electronic PIC-change orders.[3] MCI supports the Commission's proposal to require incumbent LECs to have separate charges for manual and mechanized PIC-change requests. MCI agrees that separate charges, together with new safe harbors, will result in more reasonable PIC-change charges.

New Safe Harbors. Separate manual and electronic charges will, as the Commission noted, require development of new safe harbors. These new safe harbors can be calculated from the cost support data filed with BellSouth's most recent tariff filing on PIC-change charges,[4] but additional information and further refinement of the data is required. Based on cost data from BellSouth's most recent tariff filing, the appropriate safe harbor should be no more than $1.09 for electronic PIC changes and considerably less than $3.83 for manual PIC changes.[5] The proposed safe harbor for electronic orders is calculated based on BellSouth's electronic cost components, without adjustment. The safe harbor for charges for manual orders, as described

[3] *Further NPRM* ¶ 4.

[4] BellSouth Telecommunications, Inc. Tariff FCC No. 1, Transmittal No. 756 (filed Nov. 4, 2003).

[5] *See* "Calculation of Safe Harbors," attached as Exhibit 1.

more fully below, has been adjusted to exclude the manual cost components associated with third party verification ("TPV") and PIC freezes.[6]

As MCI previously has demonstrated, TPV costs arise during implementation of a PIC freeze or verification of a PIC change. In either circumstance, inclusion of such costs is inappropriate. In particular, the inclusion of TPV costs associated with PIC freezes is improper because, as explained below, the implementation of a PIC freeze is a separate, optional service, not a step in the execution of a PIC change. In addition, TPV costs associated with the verification of PIC changes should be excluded because the verification of PIC changes is not a function performed by the executing carrier during the PIC-change process. The Commission's slamming rules clearly distinguish between the *submitting* carrier, which uses TPV to verify PIC changes *before* submitting the PIC-change request to the incumbent LEC, and the *executing* carrier, which is prohibited from verifying the submission of a PIC change prior to executing the request.[7] Thus, to the extent that these charges appear in BellSouth's cost data, it can only be because BellSouth is the submitting carrier, *i.e.*, because it is acting as a sales and marketing agent on behalf of its interLATA affiliate. Those costs, however, should be recovered from

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6 The electronic cost estimated by BellSouth is unchanged because it does not appear that BellSouth included third party verification or PIC freeze activities as part of an electronic PIC change.

7 *See* 47 C.F.R. § 64.1120(a)(2) ("An executing carrier shall not verify the submission of a change in a subscriber's selection of a provider of telecommunications service received from a submitting carrier."); *see also Implementation of the Subscriber Carrier Selection Changes Provision of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508, ¶ 98 (1998) ("We conclude that executing carriers should not verify carrier changes prior to executing the change."). Consistent with these rules, BellSouth's tariff states that the interexchange carrier (or "IC") performs TPV before the PIC-change order is submitted to BellSouth, the executing carrier, for processing. *See* BellSouth Tariff FCC No. 1, § 13.3.3(B) (effective Nov. 28, 2000).

BellSouth's interLATA affiliate, not as part of the PIC-change charge.[8] Excluding these TPV costs results in a manual charge of $4.17.

The TPV adjustment, however, only partially removes the cost of PIC freezes – the added labor time for PIC freeze solicitation or lifting is still included. Based on consumer data provided in BellSouth's tariff filing, TPV and PIC freeze activity account for approximately 15% of the overall labor cost.[9] Adjusting the labor cost for all manual PIC changes by 15% results in a cost for manual processing of PIC changes of $3.83.

Furthermore, it appears likely that BellSouth's estimate for manual processing includes significant marketing costs. As a general matter, it is the practice of BellSouth and other incumbent LECs to use every customer contact – including inbound calls – as an opportunity to market the services of the incumbent LEC or its affiliates, including services offered by interLATA affiliates. More specifically, the work times included in the data BellSouth filed to justify its costs for manual PIC changes are considerably longer than one would expect for a simple PIC change. It seems likely that BellSouth's cost estimates include time that its customer service representatives spend marketing BellSouth's services during a customer's inbound call to change his or her PIC. For example, BellSouth estimates that its representatives spend over three and one-half minutes of customer contact time processing a consumer PIC-change request during an inbound call. In contrast, BellSouth's representatives require only about thirty seconds of contact time to perform TPV or PIC freeze activities during the same call. It is highly unlikely that it takes a customer representative *seven times longer* to implement a PIC-change request

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8 Sales and marketing of long distance by BellSouth on behalf of its separate, interLATA affiliate should be governed by contract. *See* 47 U.S.C. § 272(b)(5).

9 Because BellSouth's cost study does not break out the cost of PIC freeze activity for its business-related PIC changes, MCI relies on the consumer data to estimate the percentage of overall labor costs accounted for by TPV and PIC freeze activities.

than to apply or lift a PIC freeze, or to obtain third party verification. In order to ensure that the manual safe harbor properly excludes the time associated with any marketing activities, the Commission should require BellSouth to provide additional data regarding the work times shown in its cost study.

The safe harbor for manual processing should also exclude computer system costs associated with PIC freeze or marketing or other unrelated functions, as well as any claimed system costs that do not accurately reflect the cost of processing PIC changes.[10] Although MCI has been unable to make these additional corrections due to the inadequate detail contained in BellSouth's service order and system cost documentation, the final safe harbor for manual processing should be adjusted accordingly. The Commission should require BellSouth to provide additional information that will allow the Commission to calculate and then adopt the proper safe harbor.[11]

Disclosure to Customers. The Commission sought comment on how to make customers aware of different rates for PIC-change charges.[12] The Commission should require that an incumbent LEC that intends to assess a higher rate for manual, as compared to electronic, processing of PIC changes to disclose to the end-user customer: (1) the amount of the charge the customer will incur for manual processing if the LEC processes the customer's request; and (2) the amount of the charge the customer will incur for electronic processing if the customer

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10 *See* MCI Opposition to BellSouth Tariff at 7-8. It is unclear from BellSouth's tariff whether its electronic cost estimate includes improper computer system costs. To the extent that it does, such costs also should be excluded from the safe harbor for electronic processing.

11 BellSouth currently has a lower charge for the second PIC, which reflects the fact that the cost of a second PIC is incremental, and lower than the cost of the first PIC. Therefore, in establishing the new safe harbors, the Commission should also establish safe harbors for the second PIC, that reflect the incremental nature of the costs associated with that PIC.

12 *Further NPRM* ¶ 6.

directly contacts its interexchange carrier ("IXC"). Requiring such disclosure would not only lessen customer confusion, it would also ensure that consumers are able to make informed decisions with respect to opportunities to lower the charges they pay for PIC changes.

Incentives for LECs to Adopt Automated Processes. MCI also agrees that the Commission should limit the ability of carriers that do not make electronic PIC-change processes available to their end users to assess a higher PIC-change charge for manual processing.[13] Specifically, in the case of PIC-change requests submitted by an IXC that has an automated system, the executing LEC should be precluded from assessing the IXC's customers a PIC-change charge established for manual processing, regardless of how the order is processed. Stated differently, if the LEC employs a manual process, but the IXC is capable of using or actually uses an electronic process, the Commission should require the LEC to assess the electronic fee. Adopting such a rule would ensure that all end users have the ability to minimize their PIC-change charges by virtue of their selection of an IXC that is capable of using automated systems. In addition, limiting the ability of executing LECs to assess higher PIC-change fees for manual processing will provide an incentive for those carriers to automate their systems.[14]

Tariff Filings. The Commission should direct incumbent LECs to file revised tariffs within 30 days of the release of the FCC order. As with the existing safe harbor, to the extent that an incumbent LEC's costs exceed those of the applicable safe harbor, it may file a tariff with the appropriate cost support data justifying why its costs exceed the safe harbor.

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[13] *Id.* ¶ 7.

[14] In the past, some small LECs have refused to accept PIC-change orders from IXCs. This practice is unlawful, and the Commission should clarify that all LECs must accept IXC-submitted PIC-change orders.

III. The Commission Should Require Separate Assessment of Any PIC Freeze Charges and Ensure That Its PIC-Change Rules Apply to All LECs

Assessment of PIC Freeze Charges. The *Further NPRM* also requested comment on whether PIC freeze charges should be assessed separately from PIC-change charges.[15] In the *1984 Access Tariff Order*, the Commission strictly limited the types of costs that may be recovered through the PIC-change charge, stating that "[a] presubscription charge that recovers the *unbundled costs of a subscription change* would be reasonable."[16] The "unbundled costs" of a PIC change, however, do not include the cost of a PIC freeze. To implement a PIC change, the incumbent LEC's customer service representative need only solicit the customer's choice of presubscribed carrier and enter the identity of the end user's new interLATA carrier. The solicitation and implementation of a PIC freeze is not a step in that process; rather, the PIC freeze is a separate and optional service that the incumbent LEC has chosen to offer.

The Commission's previous statements on the topic as well as its current rules confirm that the cost of implementing a PIC freeze cannot be characterized as among the "unbundled costs of a subscription change." In the initial notice of proposed rulemaking, the Commission made clear that its current rules do not contemplate that PIC freeze costs be recovered through the PIC-change charge.[17] Moreover, section 64.1190(d)(1)(iii) of the Commission's rules

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15 *Further NPRM* ¶ 10.

16 *Investigation of Access and Divestiture Related Tariffs*, Memorandum Opinion & Order, 55 Rad. Reg. 2d (P&F) 1422 at App. B, 13-5 (1984) ("*1984 Access Tariff Order*") (emphasis added).

17 *Presubscribed Interexchange Carrier Charges*, Order and Notice of Proposed Rulemaking, 17 FCC Rcd 5568, ¶ 17 (2002) ("If commenters argue that the additional costs of conducting a PIC change for a customer subscribing to a PIC-freeze service should be recovered through the PIC-change charge, we seek comment on how to allocate the additional costs among jurisdictions.").

specifically states that, to the extent an incumbent LEC seeks to recover the costs of implementing PIC freezes, it must separately identify those charges.[18]

Requiring incumbent LECs to charge a separate fee for PIC freeze service also serves the public interest. That is because a separate fee would make consumer bills more transparent. Consumers who have chosen to pay for PIC freeze service would see exactly how much they are paying for that service in their bills. Likewise, those consumers who have opted not to purchase PIC freeze service would be able to discern whether a freeze had been inappropriately applied to their accounts.[19] Such early detection would, in turn, help consumers remove unwanted freezes before they result in a change request being denied or delayed. Requiring a separate charge would also ensure that end users who have not opted to purchase a PIC freeze service would not be required to pay for that service.[20]

Applicability of New Rules to Competitive LECs. The *Further NPRM* suggests that any PIC-change rules adopted in the instant proceeding would apply only to incumbent LECs.[21] MCI urges the Commission to apply such rules to all LECs, including competitive LECs.

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18 47 C.F.R. § 64.1190(d)(1)(iii) ("All carrier-provided solicitation and other materials regarding preferred carrier freezes must include . . . [a]n explanation of any charges associated with the preferred carrier freeze.").

19 *See MCI, et al. v. U S WEST Communications, Inc.*, Decision Nos. R99-1362 (Colo. PUC, 1999) and C00-513 (Colo. PUC, 2000) (U S WEST found to have extended its customers' PIC freeze on their interLATA account to their intraLATA accounts, with U S WEST as the chosen intraLATA carrier, without the customers' knowledge or consent).

20 *See Capital Network Systems, Inc., Tariff F.C.C. No. 2*, Memorandum Opinion and Order, 7 FCC Rcd 8092, ¶ 9 (1992), *petition for review denied, Capital Network Systems, Inc. v. FCC*, 28 F.3d 201 (D.C. Cir. 1994) ("We conclude that it is patently an unreasonable practice for Capital to automatically charge an entity for a service it did not order and may not have received"); *see also Truth-in Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492, ¶ 37 (1999) ("providing clear communication and disclosure of the nature of the service for which payment is expected is fundamental to a carrier's obligation of reasonable charges and practices.").

21 *See Further NPRM* ¶ 1 n.2.

Although the Commission often chooses not to regulate the rates charged by competitive carriers,[22] it has regulated such rates when it determined them to be inadequately constrained by market forces.[23] Under current network configurations, the competitive LEC has control over the processing of PIC changes for its end-user customers. Accordingly, competitive LECs should be required to comply with the same safe harbor and disclosure requirements for PIC changes as incumbent LECs. Imposing such requirements will assist end-user customers in making informed decisions.

Assessment of PIC-Change Charges. In the *Further NPRM*, the Commission requested comment on whether the PIC-change charge should be assessed on the submitting entity, *i.e.*, on the consumer when it submits the order to the LEC directly and on the IXC when the IXC submits the request.[24] At this point, there is no need to alter the Commission's long-standing requirement that consumers pay applicable PIC-change charges. As an initial matter, to the extent that an IXC desires to pay the PIC-change charge on behalf of its customer, the current Customer Account Record Exchange (CARE) system already permits the carrier to designate itself (rather than the end user) as the entity to be billed for charge. In addition, many IXCs, including MCI, currently offer to reimburse the consumer for, or otherwise pay, all or a portion of the PIC-change fee. Finally, virtually all major IXCs have expended the resources necessary to enable them to submit PIC changes electronically. Thus, assessing IXCs directly will not provide an incentive to automate their PIC-change processes because those systems have already been automated.

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22 *Id.*

23 *See, e.g., Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923, ¶ 34 (2001).

24 *Further NPRM* ¶ 5.

CONCLUSION

For the reasons stated, the Commission should adopt separate safe harbors for electronic and manual PIC-change charges based on the data provided in the recent BellSouth tariff filing. The Commission also should prohibit carriers from recovering PIC freeze, marketing, and other unrelated costs in their PIC-change charges, and clarify that the new safe harbors apply to all LECs, including competitive LECs.

Respectfully submitted,

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Exhibit 1

CALCULATION OF SAFE HARBORS

BellSouth Tariff FCC No. 1, Transmittal No. 756, Attachment A, page 3 (filed Nov. 4, 2003), modified to exclude PIC Freeze and TPV Costs (see Notes 1 & 2)

Item/Description	Unweighted Cost/PIC Change	Service Order Delivery & Entry		Third Party Verification	Provisioning & Billing Supprt	Miscellaneous Other		Weighting	Weighted Cost
		Labor	Computer						
Manual		**NOTE 1**		**NOTE 2**				**NOTE 3**	
Consumer	$4.0634	***1.7847***	1.5209	***0***	0.7458	0.0120		0.4130	$1.6784
Small Business	$4.0866	***1.7538***	1.8984	***0***	0.4295	0.0049		0.1888	$0.7716
Large Business	$2.1559	***1.7036***	0.2545	***0***	0.1740	0.0238		0.3115	$0.6715
Equal Access	$4.7873	***1.9665***	2.2759	***0***	0.5025	0.0424		0.0426	$0.2040
Payphone	$7.2692	***4.4548***	2.6434	***0***	0.0868	0.0843		0.0440	$0.3197
Wireless	$15.7076	***4.8231***	0.8234	***0***	0.8675	9.1936		0.0001	$0.0016
Total Manual									$3.6467
BellSouth Common Cost Factor									1.0497
Total Manual (including common costs)									**$3.8279**
Mechanized									
Elec-Comm - CPM/Gateway	$1.3383	0.0038	0.2937		1.0407	0.0001		0.1441	$0.1929
Connect:Direct	$0.9813	0.0030	0.0048		0.9734	0.0001		0.8535	$0.8375
Magtape	$4.8946	0.0048	3.9206		0.9691	0.0001		0.0002	$0.0011
MSOL (Paper)	$1.3913	0.3092	0.0255		1.0142	0.0424		0.0022	$0.0030
Total Mechanized									$1.0345
BellSouth Common Cost Factor									1.0497
Total Mechanized (including common costs)									**$1.0860**

NOTE 1 Labor costs reduced by 15% to exclude PIC freeze- and TPV-related labor costs
15 percent figure derived from BellSouth Transmittal No. 746, Attachment E, showing 0.65 mins of total 4.15 minutes of service rep time as freeze or TPV-related

NOTE 2 TPV vendor costs excluded

NOTE 3 Weightings derived from BellSouth Transmittal No. 756, Attachment A, page 2, column E.

Certificate of Service

I, Ruth E. Holder, hereby certify that on this 15th day of June, 2004, I caused true and correct copies of the foregoing Comments of MCI to be mailed by electronic mail to:

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